THE MINNESOTA RATE CASES.—Few decisions in recent years have created more popular interest and comment than this decision by the Supreme Court of the United States. (*Simpson* v. *Shepard,* 33 Sup. Ct. 729.) But a close examination of the decision of the court will clearly show that there is nothing contained therein which does not have a sound basis in previous decisions of that court.

This decision is the outcome of suits begun by stockholders of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Minneapolis and St. Louis Railroad Company questioning the constitutionality of certain acts of the Minnesota Legislature and orders of the Minnesota Railroad and Warehouse Commission which reduced rates for the transportation of freight and passengers between points within the state of Minnesota. These acts and orders were attacked on the grounds that: first, they interfered with interstate commerce and thereby violated Art. I, Sec. 8 of the Constitution of the United States; and, second, they were confiscatory, thereby violating the Fifth Amendment relative to taking of property without due process of law. In order to understand how these cases arose, it is necessary to bear in mind that the North Dakota-Minnesota boundary line and the Wisconsin-Minnesota boundary line run between pairs of adjoining cities, one city in each pair being in Minnesota and the other in the adjoining state; from their natural position these cities are competitors in the handling and distribution of freight, and the railroad companies have always put each city of a pair upon a parity with the other in the matter of rates. The lowering of intrastate rates would thus naturally have the effect of lowering interstate rates, as the carrier is bound to keep these cities upon a parity or necessarily impair its power to transact an interstate business. And the carriers, upon the taking effect of the new intrastate rates, actually made the same reduction with reference to those cities without the state and along the border, as was made in the intrastate rates by the acts and orders.

With reference to interstate commerce the Court holds, first, that, where Congress has failed to act upon the subject each state is free to establish maximum intrastate rates for carriers which may be interstate, provided that these rates are reasonable, even though these rates established by the state necessarily disturb the relation existing between intrastate and interstate rates as to places within zones of competition crossed by the state boundary line; second, that, Congress has the power to regulate intrastate commerce in those cases where intrastate and interstate commerce are so commingled that regulation of intrastate commerce is necessary to the full, complete and adequate regulation of interstate commerce.

In its opinion, which was written by Mr. Justice HUGHES, the court, after referring to the plenary power of Congress over interstate commerce, in the words of *Gibbons* v. *Ogden,* 9 Wheat. 1, 196, continues as follows: "It has repeatedly been declared by the court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress

does act, the exercise of its authority overrides all conflicting state regulation. *Cooley* v. *Port Wardens,* 12 How. 299, 319."

And after referring to the powers which are left for the state to exercise in the absence of Congressional action, the court sums up this phase of the question as follows: "Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature, belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible." And as an illustration of this principle cases are cited and approved by the court where such questions were considered as local action with respect to pilotage, *Cooley* v. *Port Wardens,* 12 How. 299, 319, and with respect to quarantine, *Morgan's L. & T. R. & S. S. Co.* v. *Board of Health,* 118 U. S. 455.

The court in considering the doctrine of concurrent powers failed to do that which was expected, the removing of the confusion which resulted from prior expressions by the courts. This confusion is the result of the decision in *Willson* v. *Blackbird Creek Marsh Co.,* 2 Peters 245, 8 Curtis 105. In that case the plaintiff, a sloop owner, had torn out a dam built by the defendant corporation, which was authorized to reclaim marsh land and had power to build dams across the creek, which was navigable and tidal. The plea to an action of trespass was that the act of defendant, sanctioned by the state, was an interference with commerce, and therefore unconstitutional. The decision of the court was rendered by MARSHALL, C. J., who said:

"The repugnancy of the law of Delaware to the Constitution is placed entirely upon its repugnancy to the power to regulate commerce with foreign nations and among the several states; a power which has not been so exercised as to affect the question.

"We do not think that the act empowering the Blackbird Creek Marsh Co. to place a dam across the creek, can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state or as being in conflict with any law passed upon the subject."

This case has been considered as the first case announcing the doctrine of concurrent powers. But by many this decision is considered to be a slip on the part of MARSHALL, C. J. It seems though that this case stands only for the proposition that the state can act with regard to interstate commerce where Congress has not acted and where a local police measure is expedient. An expression by the court, in the principal case, to a certain extent clears

up the confusion, by pointing out the difference in the source and nature of the powers exercised by the state and nation over commerce, and by showing that the state does not have jurisdiction over interstate commerce as such. And upon principle, it would seem that commerce among the several states and with foreign nations is exclusively within the control of Congress, although police regulations of a state may indirectly affect such commerce.

As to the first ground of attack, the objection that the state can not so regulate rates for intrastate commerce as to affect interstate rates fixed by the carrier, the court rejects the contention in the following words: "To say that this power exists, but that it may be exercised only in prescribing rates that are on an equal or higher basis than those which are fixed by the carrier for interstate transport is to maintain the power in name while denying it in fact. It is to assert that the exercise of the legislative judgment in determining what shall be the carrier's charge for the intrastate service is itself subject to the carrier's will. But this state-wide authority controls the carrier and is not controlled by it; and the idea that the power of the State to fix reasonable rates for its internal traffic is limited by the mere action of the carrier in laying an interstate rate to places across the State's border, is foreign to our jurisprudence."

It is evident that if the contention of the carrier were to prevail a state would be rendered powerless to fix rates for intrastate commerce, as such rates would be fixed by the interstate rates established, perhaps arbitrarily, by the carrier. This conclusion of the court is supported by the following cases decided prior to the principal case. *Dow* v. *Beidelman,* 125 U. S. 680; *St. L. & S. N. R. Co.* v. *Gill,* 156 U. S. 649; *Smyth* v. *Ames,* 171 U. S. 361; 365.

This conclusion is further supported by the provision in the first section of the Act to Regulate Commerce , (Act of June 29, 1906, chap. 3591, 34 STAT. AT L. 584, U. S. COMP. STAT. SUPP. 1911, p. 1288). "Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country, from or to any state or territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one state, and not transmitted to or from a foreign country, from or to any state or territory as aforesaid."

With reference to the authority of Congress to regulate intrastate rates where the interstate and intrastate rates are so blended that it is necessary to regulate intrastate rates in order to exercise the federal authority completely and effectively, the court says: "To suppose, however, from a review of these decisions, that the exercise of this acknowledged power of the state may be permitted to create an irreconcilable conflict with the authority of the nation, or that, through an equipoise of powers, an effective control of interstate commerce is rendered impossible, is to overlook the dominant operation of the Constitution, which, creating a nation, equipped it with an authority, supreme and plenary, to control national commerce, and to prevent that control, exercised in the wisdom of Congress, from being obstructed or destroyed by any opposing action. But, as we said at the outset, our system

of government is a practical adjustment by which the national authority, as conferred by the Constitution, is maintained in its full scope without unnecessary loss of efficiency. It thus clearly appears that, under the established principles governing state action, the state of Minnesota did not transcend the limits of its authority in prescribing the rates here involved, assuming them to be reasonable intrastate rates. It exercised an authority appropriate to its territorial jurisdiction, and not opposed to any action thus far taken by Congress.

"The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. * * * But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce. If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not, under the guise of construction, to provide a more comprehensive scheme of regulation than Congress has decided upon, nor, in the absence of Federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power."

Although this expression was not necessary for a decision of the case it can not be denied that it is of great importance as showing the views of the court upon the question of the regulation of intrastate commerce by the Federal government. The following passage from the opinion shows very conclusively the reason for such an expression by the court:

"The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the state, as such, but that the execution by Congress of its power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere. *McCulloch* v. *Maryland,* 4 Wheat. 316, 405, 426; *The Daniel Ball,* 10 Wall. 557, 565."

The decision of the court is not in the least surprising when the following cases are considered: *St. Louis and Southwestern Ry. Co.* v. *Arkansas,* 217 U. S. 136; *Interstate Commerce Commission* v. *Illinois Central Ry. Co. et al.,* 215 U. S. 452, 474; *Southern Ry. Co.* v. *U. S.,* 222 U. S. 20, and *Interstate*

Commerce Commission v. *Goodrich Packet Co.*, 224 U. S. 194. Of these cases the last is probably the best illustration of the principle involved in the dicta of the principal case. The Packet Co., an interstate carrier, refused to comply with a statute requiring a full disclosure of its business, on the ground that the business which it did was to a great extent intrastate and that a Federal statute requiring that all its business be disclosed was unconstitutional as being an infringement upon the power of the state to regulate intrastate commerce. But the court held that, as a complete disclosure of the carrier's business, both interstate and intrastate, was necessary to obtain complete and necessary information as to the interstate business done, the statute was constitutional, being clearly within the power of Congress to regulate interstate commerce.

It is hardly possible upon principle and authority to conceive how the court could have come to any different conclusions upon the question presented in the principal case. For to hold otherwise would result in a dual system of control over commerce by which Federal action would be rendered ineffective by state action. The court does not deny that the state may act in such a way that interstate commerce may be affected. But the question as to whether or not the state shall so continue to act where interstate and intrastate matters are commingled is by this decision left to the sound judgment and discretion of Congress. And the inevitable result of the broad view taken of the Federal power to regulate commerce, will be to greatly increase the Federal power and to narrow the power of the state. G. E. K.